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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SECURITIES AND EXCHANGE
COMMISSION;

Plaintiff,

vs.

CAPSOURCE, INC., et al.

Defendants.

Case No: 2:20-CV-02303-RFB-DJA

**STIPULATION AND ORDER TO LIFT
STAY OF LITIGATION FOR A
LIMITED PURPOSE**

Plaintiff Securities and Exchange Commission and Receiver Geoff Winkler of American Fiduciary Services, in his capacity as court-appointed Receiver (the “**Receiver**”) for Defendant CapSource, Inc., stipulate and agree that:

1. On August 26, 2022, the Court issued its Order Appointing Receiver, in which the Court appointed Geoff Winkler receiver of Defendant CapSource, Inc. *See* ECF No. 17.

2. Prior to being voluntarily dismissed pursuant to Nev. R. Civ. Pro. 41(a)(1)(A)(i), CapSource was a defendant in a lawsuit pending in the Eighth Judicial District Court of the State of Nevada styled *Vantage Holdings, LLC, et al. v. Capfactor LLC et al.*, Case No. A-22-850573-B (the “**Vantage State Court Action**”). Stephen J. Byrne and Gregory P. Herlean are and remain individually named as defendants in the Vantage State Court Action.

1 3. The Order Appointing Receiver includes a Stay of Litigation, (*see* ECF No. 17,
2 ¶29), whereby all persons are stayed from commencing, prosecuting, or continuing, until further
3 Order of this Court:

4 All civil legal proceedings of any nature...involving...(c) any of the
5 Receivership Defendants, including subsidiaries and partnerships; or (d)
6 any of the Receivership Defendants' past or present officers, directors,
7 managers, agents, or general or limited partners sued for, or in
8 connection with, any action taken by them while acting in such capacity
9 of any nature, whether as plaintiff, defendant, third-party plaintiff, third-
10 party defendant or otherwise...

11 4. The Vantage State Court Action is a civil legal proceeding formally involving
12 CapSource as a defendant that would have been subject to the Stay of Litigation. The Vantage
13 State Court Action also involves claims against Stephen Byrne and Gregory Herlean relating, in
14 part, to actions taken by Byrne and Herlean as officers, directors, managers, or agents of
15 CapSource.

16 5. Before defendants CapSource, Byrne, and Herlean responded to the complaint in
17 the Vantage State Court Action, the Notice of the Order Appointing Receiver was filed, and the
18 matter was stayed.

19 6. The parties in the Vantage State Court Action had ongoing discussions to
20 determine if the matter may proceed without violating this Court's Stay of Litigation.

21 7. Accordingly, the plaintiffs in the Vantage State Court Action agreed to proceed
22 to trial against all named defendants other than CapSource, who has been dismissed without
23 prejudice, and plaintiffs agree that no claims against CapSource will be tried or determined in
24 the Vantage State Court Action.

25 8. Additionally, to the extent the Vantage State Court Action asserts claims against
26 Byrne and Herlean related to their roles as officers, directors, managers, or agents of CapSource,
27 those claims will not proceed to trial and remain stayed. Plaintiffs may proceed with any claims
28 against Byrne and Herlean to the extent that such claims are unrelated to their role as officers,
directors, managers, or agents of CapSource. Plaintiffs may proceed with any claims and theories
where purported transfers to and/or from CapSource are referenced. For example, claims and

1 theories against Byrne and Herlean alleging they, as officers, directors, managers, or agents of
2 Capfactor, LLC (“**Capfactor**”), a defendant in the Vantage State Court Action, breached
3 fiduciary duties to Capfactor based on the purported transfers to and/or from CapSource. By
4 limiting the scope of the claims in the Vantage State Court Action to exclude claims asserted
5 against CapSource and against Byrne and Herlean as officers, directors, managers, or agents of
6 CapSource, the parties believe the Vantage State Court Action may proceed without infringing
7 upon the Receiver’s ability to perform his duties in marshaling and preserving the assets of
8 CapSource in this proceeding.

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1 **ACCORDINGLY, IT IS STIPULATED AND REQUESTED** by the parties through
2 their undersigned counsel of record that the Stay of Litigation be lifted for the limited purpose
3 of permitting the Vantage State Court Action to proceed to trial: (1) against all parties other than
4 Capsource, Inc. and (2) against Stephen J. Byrne and Gregory P. Herlean for claims that are
5 unrelated to their roles as officers, directors, managers, or agents of CapSource as outlined in
6 this Stipulation.

7 Dated this 17th day of ~~September~~ ^{October}, 2023

8 **GREENBERG TRAUIG, LLP**

9
10 /s/ Kara B. Hendricks
11 KARA B. HENDRICKS, Bar No. 7743
12 KYLE A. EWING, Bar No. 14051
13 CHRISTIAN T. SPAULDING, Bar No. 14277
14 Attorneys for Receiver Geoff Winkler

15 **IT IS SO STIPULATED AND AGREED:**

16 Dated this 10th day of ~~September~~ ^{October}, 2023

17 DEFENDANT GREGORY P. HERLEAN,

18 **ACKNOWLEDGED BY:**

19 Dated this 11th day of ~~September~~ ^{October}, 2023

20 Bradley S. Slighting
21 BRADLEY S. SLIGHTING, ESQ.
22 Nevada Bar No. 10225
23 SLIGHTING LAW

24 Attorney for Plaintiffs in Case No. A-22-
25 850573-B pending in the Eighth Judicial
26 District Court of Clark County, Nevada

 Dated this 17th day of ~~September~~ ^{October}, 2023

**SECURITIES & EXCHANGE
COMMISSION**

/s/ Terry Miller
 TERRY MILLER
 (Colorado Bar No. 39007)
 Attorneys for Plaintiff Securities &
 Exchange Commission

 Dated this 10th day of ~~September~~ ^{October}, 2023

 DEFENDANT STEPHEN J. BYRNE

27 **IT IS SO ORDERED.**

28 [Signature]
 DANIEL J. ALBREGTS
 UNITED STATES MAGISTRATE JUDGE

 DATED: October 25, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on the 17th day of October, 2023, a true and correct copy of the foregoing **STIPULATION AND ORDER TO LIFT STAY OF LITIGATION FOR A LIMITED PURPOSE** was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's CM/ECF system, and parties may access this filing through the Court's CM/ECF system.

/s/ Evy Escobar-Gaddi
An employee of GREENBERG TRAURIG, LLP